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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,208	02/24/2004	Martin Kienbock	87433.2522	9239

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EXAMINER
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BUSHEY, CHARLES S

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 10/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/784,208

Applicant(s)

KIENBOCK ET AL.

Examiner

Scott Bushey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-4 and 6-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4 and 6-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8-22-05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 2-4, 6-8, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston et al taken together with Kostyniak et al.

Johnston et al (col. 3, line 63 through col. 4, line 2; col. 8, lines 8-11, and 20; col. 30, lines 28-39, 63-67; claim 13) disclose forming the fill materials used in the wet/moist area of a cooling tower from PVC or other thermoplastic materials that are impregnated with antimicrobial agents during their molding to prevent the growth of algae and/or bacteria within the cooling tower. Johnston et al, however, fails to specifically disclose

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providing various other internal structures within the cooling tower, such as the pipes, nozzles, and sidewalls with the antimicrobial characteristics.

Kostyniak et al (col. 8, lines 54-67) suggest providing polymeric coatings for coating any surface within a cooling tower to kill or inhibit the growth of bacteria therein. It would have been obvious for an artisan at the time of the invention, to include an antimicrobial surface on any or all surfaces within the cooling tower as taught by Johnston et al, in view of the suggestion by Kostyniak et al, since such would totally prevent microbial growth within a cooling tower structure. Clearly one having ordinary skill in the art would recognize that allowing certain tower internals, such as pipes and nozzles, to go untreated by the antimicrobial agents would defeat the whole purpose of the reference disclosures by allowing the propagation of dangerous pathogens, such as *Legionella pneumophila*, which causes Legionaire's disease.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the reference combination as applied to claims 2-4, 6-8, 10, and 11 above, and further in view of Yaeger et al.

The reference combination as applied above to claims 2-4, 6-8, 10, and 11, substantially discloses applicant's invention as recited by instant claim 9, except for the specific recitation that the additives are in the form of noble metals or noble metal compounds. Applicant should note that the Johnston et al reference (col. 4, lines 1-2) does disclose the use of metallic particles as additives.

Yaeger et al (paragraphs [0081] and [0082]) disclose that it is known to use noble metal compounds, such as titanium oxides, as an additive impregnated within a

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polymeric compound to prohibit the growth of algae, bacteria, and other microorganisms. It would have been obvious for an artisan at the time of the invention, to select a noble metal compound as the chosen antimicrobial additive within the cooling tower internals of the primary reference combination, in view of the teaching by Yaeger et al, since the toxicity of the noble metallic compounds is known to be low, while providing the desired antimicrobial characteristics.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 2-4, and 6-11 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

6. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is 571 272-1153. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Bushey  
Primary Examiner  
Art Unit 1724

csb  
10-13-05



10-13-05